

REMARKS

Claims 1-15 remain pending in the present application. Of these, claims 1-15 stand rejected. Claims 1 and 9 are the independent claims. Reconsideration of the application in light of the remarks made herein is respectfully requested.

Discussion of Present Application

Applicant's invention as, as recited by claims 1-15, provides a versatile mechanism for the delivery of advertising material specifically targeted to potential consumers of goods or services, by tailoring the advertisements to a demographic profile of particular consumers. Such a targeting enhances the cost effectiveness of the advertising and minimizes the negative reactions often associated with the promotion of goods or services in which a particular consumer has no interest.

This method makes use of a saver card in communication with the program administrator to enhance the method's effectiveness. Responses to targeted advertisements are evidenced by activation of the saver card, which is associated with the recorded profile of a particular consumer. Saver cards can take the form of any one of various types of identification cards (such as keychain cards, credit cards, etc.), and may be distributed to customers and potential customers of the advertising system (at no cost or with a fee) by a business or retailer.

Advantageously, customers holding a saver card who choose to participate in this marketing program must register with the program administrator (via, for example, an internet website). As a result of registration, targeted messages and advertisements are forwarded to the saver card holder. This system may be advantageously used for both on-line and off-line purchasing.

Claim Rejections – 35 U.S.C. § 103(a)

Claims 1-15 were rejected under 35 U.S.C §103(a) as being unpatentable over US Patent 7,158,943 to Van der Riet ('943 herein after) in view of US Patent Publication US20020046116 to Hohle et al.

It is respectfully noted that though the rejection cites the '943 patent, the Examiner has indicated that only its Parent, Provisional Application No. 60/316268 (hereinafter referred to as the "Provisional" reference) is applicable against the instant application.

In applicant's previous response, it was submitted that one of ordinary skill would recognize modifying the platform disclosed in the Provisional reference, as discussed by Hohle, to include saver cards that are used at a retail store would be burdensome. It was submitted that such a system would require each retailer to buy and/or develop saver card reading software, hardware and usage procedures for each of the sales points at a retail store (i.e. each cash register). Moreover, such a platform would have to be specially developed for each individual retailer, as each individual retailer will have radically different systems, software, hardware and procedures which would have to be modified so as to be able to interface with the platform.

In response, the Examiner stated that the ability to "buy" such a feature is evidence that it is routine. None of these tasks are beyond one of ordinary skill. This is what computer system designers and implementers do all the time. Simply because it takes time and/or money does not equate to non-obviousness and does not equate to extraordinary skill requirements. These are also the types of things Hohle et al is assumed to tackle for his system which offers both online and offline retailer tracking. Further, because the Examiner posited an obvious combination of references does not mean that one of ordinary skill would have to necessarily modify existing software/hardware of Van der Riet (Applicant has assumed that the Examiner's recital of "Van der Riet" refers to the Provisional reference). One of ordinary skill having to motivation to construct the system deemed obvious could also build such a system from scratch without needing to address any challenges related to retrofitting an existing system. Therefore, not only is the homologizing believed to be fairly routine to one of ordinary skill, but unnecessary if a new system was created from day one. In short, cost and time of software/system development and implementation are not dispositive of non obviousness.

Applicant respectfully disagrees with these contentions and respectfully submits the following to clarify his view. In addition to the applicant's previously submitted points, it is respectfully submits that the artesian of ordinary skill would recognize that many retailers already provide "identification/loyalty cards" to their customers. These cards serve several important functions, which can be integrated into specific retailer customer loyalty initiatives. These "cards" are appointed with indicia, e.g. the logo of a specific retailer, and meticulously designed to maintain brand recognition and

loyalty. At a very minimum these cards help keep the specific retailers in the thoughts of their "card" carrying customers.

The artesian of ordinary skill would recognize that retailers would not be willing to forgo their investment in these "cards", especially the brand association that is so integral to these "cards". The artesian would also so recognize that the retailers would not give up the ability of their branded "cards" to help keep them in the mind of their consumers. It would be recognized that retailers are also not very keen on the idea of putting additional burdens on their consumers, forcing the consumer to do anything that they might consider to be an additional burden, *e.g.* carry around another "generic card" in addition to the retailer's own branded card. The artisan would also recognize that the retailers would not want to lose their branded "cards" ability to keep them in the minds of their customers by scrapping their current programs and cards and replacing them with a generic card that could very well be associated with and used at their competitors as well.

It is submitted that, as stated in the Provisional reference in the first full paragraph of page 3, the object of the system disclosed there in is to address, with emphasis added, "... the above described issues by facilitating collaborative interactive communication processes that create win-win value for both manufacturers, retailers, portals and consumers, that none of these parties can create on its own." As disclosed in its "Background of the Invention" section, the Provisional reference is providing a system that will minimize the costs or burdens put on the Manufacturers and Retailers that opt to implement the system disclosed therein. For example, as stated in page 1, para. 2, sent. 4, "[t]he necessary IT and Marketing resources are a huge financial burden for these retailers who are

traditionally used to small margins and have traditionally enjoyed low IT and Marketing expenses.”

Clearly the Provisional reference is concerned with the final costs that will have to be passed on to their customers, *e.g.* the retailers, necessarily including the costs of designing several specific systems, geared toward specific retailers, to address these problems. Thus, the final costs of the system is an integral and inseparable design criterion for the system described by the Provisional reference and part of the problem addressed therein. Accordingly, it is respectfully submitted that the artisan of ordinary skill would not try to integrate the one or more specialized “card” systems, as disclosed in Hohle, (from scratch so to speak), into the system disclosed by the Provisional reference; such a system would be recognized to be cost prohibitive to retailers’ who have small margins and low IT and Marketing expenses. Nor would the artesian force the Retailer adopt such a “card” system or add another additional “card” system, as this would further burden the retailers and customers alike, necessarily eliminating the win-win value for retailers, portals and consumers, that none of these parties can create on their own. Accordingly, it is respectfully submitted that the artesian would have no motivation to construct the system deemed obvious and that the artesian would not attempt to build such a system from scratch (as asserted by the Examiner).

Thus, it is respectfully submitted that the artesian of ordinary skill would not try to modify the system disclosed in the Provisional with the teachings of Hohle, *i.e.* to use a saver card. As such, it is respectfully submitted that, the artesian would not combine ‘943 and Hohle as asserted by the Examiner in the instant rejection, because doing so would produce a system that would not meet the

stated purpose of the Provisional reference, namely to provide a win-win 'value' proposition for manufacturers, retailers, portals and consumers, that none of these parties can create on its own.

In light of the foregoing, it is respectfully submitted that, the asserted combination of '943 with Hohle, as applied by the Examiner, fails teach or suggest each and every element of applicant's independent claim 1. Accordingly, the applied references do not render claim 1 obvious, because they do not disclose or suggest each and every claim limitation thereof.

It is respectfully submitted that the same arguments used with respect to independent claim 1 can also be applied to independent claim 9. Accordingly, the applied references fail to render claim 9 obvious as well.

Claims 2-8 and 10-15 depend directly or indirectly from claims 1 and 9, necessarily including the elements and limitations thereof. These dependent claims recite additional features, which are neither disclosed, nor fairly suggested, by the applied reference and are therefore also in condition for allowance.

Accordingly, reconsideration of the rejection of claims 1-15 under 35 USC § 103(a) as being unpatentable over the combination of '943 and Hohle is respectfully requested.

CONCLUSION

In view of the foregoing remarks, it is submitted that claims 1-15 patentably define over the art applied. Accordingly, reconsideration of the Final Rejection and allowance of claims 1-15 are earnestly solicited.

Respectfully submitted,

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